

REMARKS

Claims 64-73 are pending in the application. Claims 64-73 are rejected. The office action has been made final. No new matter has been added. Applicants submit that claims 64-73 are now in condition for allowance.

Claim Rejections under 35 U.S.C. §102

Claims 64-68 are rejected under 35 U.S.C. 102(b) as being anticipated by Reidener (2,173,637). Claims 69, 70, and 72 are rejected under 35 U.S.C. 102(b) as being anticipated by Herwick et al. (5,286,262). Claims 69 and 73 are rejected under 35 U.S.C. 102(e) as being anticipated by Christian et al. (6,152,902). Applicants respectfully traverse the rejections.

Summary of Riedener

Riedener discloses a device for treatment of the root of a tooth for use during dental surgery. As set forth in Claim 1 of Riedener, a device is disclosed wherein two closed receptacles are detailed, each of which is sized and located within the device for the collection of different materials. The first receptacle 13, as shown in Fig. 1, is orientated to allow the collection of fluid from the drilled region of a tooth of a patient. Collected fluid may then be drained off via an opening in the vessel such that a bacteriological examination may be performed. The second receptacle 5 of Riedener is sized and located for the collection of dry particulate matter, such as tooth fragments. Such a use is detailed in column 2, lines 5-10, which read, "With the cock 3 occupying the position shown in Fig. 2, the part 8 is subject to suction. If this part 8 is put down in a place in which a tooth is being drilled, the loose material is sucked off and precipitated on the bottom of the vessel 5."

The dual vessels of Riedener are further detailed in Claims 2 and 3, wherein Claim 2 details the "dry" reservoir, and Claim 3 recited the use and existence of a "wet reservoir".

Summary of Herweck

Herweck broadly relates to a multipurpose collection vessel, and more particularly to a collection vessel that includes a closed vessel with suction regulating and chamber isolation components for receiving blood generated during surgery. The vessel of Herweck is separated into two distinct chambers, the first being a filtered reinfusion chamber, the second

being an unfiltered chamber. The vessel of Herweck is designed such that it may perform a number of functions, including the functions of a pediatric drain, reinfusion vessel, cardiectomy bucket, general wound drainage vessel or multi-site drainage vessel. In light of this, Herweck provides for the simplification of hospital inventory.

Summary of Christian

Christian discloses a method for collecting surgical fluids wherein multiple containers can be coupled in series such that a plurality of containers can be used to collect fluids via a simple arrangement wherein the outflow port of one container is connected to the inflow port of another. Additionally, Christian discloses the use of flexible disposable liners for use with the surgical fluid collection chamber, wherein the liner can have a large interior volume and allow convenient fluid collection.

35 U.S.C. 102(b) Rejection of Claims 64-68

Of claims 64-68, claim 64 is independent and claims 65-68 depend from claim 64. As stated in the response to the previous office action, Riedener does not disclose each and every element of claim 64. Applicants reassert that the indicated vessel 5 of Riedener is a vessel for collecting dry particulate matter associated with drilling a tooth. Column 2 lines 5-10 of Riedener clearly set out that the purpose of the vessel 5 is to hold dry particulate matter. Applicants respectfully disagree with the Examiner dismissal of this previously made argument because it is recited in the preamble. The recitation of collecting fluid does not just occur in the preamble as the Examiner has suggested but also in the structural elements of the claim. The “fluid recovery system for collecting fluid from a patient” of claim 64 comprises among its elements “a housing having a top surface and a collection chamber *for collecting a volume of fluid from said patient*”. Furthermore, the Examiner’s suggestion that the vessel 5 of Riedener could be used for collection of fluids takes the rejection outside the scope of 35 U.S.C. 102(b). In order for a reference to anticipate a claim, the reference has to disclose each and every element of the claim.

Applicants also reassert that the latching connector of claim 64 is neither disclosed nor recited by Riedener. The elements of Riedener indicated by the Examiner are pipes. Element 6 indicated by the Examiner as a mating connecting element is a piece of tube passing down to immediately above the bottom of the said vessel 5. The upper end of the

tube 6 is connected to a piece of hose 7. This is not the same as the mating connection element of claim 64. Element 28' indicated by the Examiner as a connecting element is actually a piece of glass pipe fused into the cap 13' of the cylinder 13. There is no indication in Riedener that elements 6 and 28' together form a latching connector. In fact, there is no disclosure of latching of any kind, let alone disclosure of a latching connector formed of at least a connecting element and a mating connecting element. Thus, Riedener fails to disclose each and every element of claim 64.

Regarding claims 65-68, Applicants submit that they are in condition for allowance by their very nature as dependent claims. Claims 65-68 depend from claim 64 and as such incorporate each and every element of claim 64. As discussed above, Riedener fails to disclose each and every element of claim 64 and therefore Riedener fails to disclose each and every element of claims 65-68. Furthermore, identified elements 6 and 28' of Riedener together do not form a latching connector. Element 28' of Riedener is a piece of glass pipe to which pieces of rubber hose 26', not a mating connection element, can be connected to. Thus, Riedener fails to disclose each and every element of claims 65-68.

Therefore, in view of the above arguments, Applicants respectfully request the reconsideration and withdrawal of the rejection to claims 64-68 under 35 USC § 102.

35 U.S.C. 102(b) Rejection of Claims 69, 70 and 72

Of claims 69, 70, and 72, claim 69 is independent and claims 70 and 72 depend from claim 69. As stated in the response to the previous office action, Herwick does not disclose each and every element of claim 69. The handle of the present invention is sized to enable two people to simultaneously hold the handle. This is a functionality not disclosed in Herwick. Applicants respectfully disagree with the Examiner's dismissal of this argument based on the suggestion that making the handle of Herwick sized to enable two people to hold the handle would be obvious. The problem with this dismissal is that it is outside the scope of a rejection under 35 U.S.C. 102. In order for a reference to anticipate a claim, the reference has to disclose each and every element of the claim. The fact that the Examiner has to invoke an *obviousness* argument proves that Herwick does not anticipate claim 69 under U.S.C. 102.

Furthermore, Applicants respectfully submit that there is no teaching or suggestion by Herwick to make the handle sized to enable two people to simultaneously hold the handle. In fact, Herwick teaches that the handle is off-center laterally so that the blood chamber will not tilt excessively downward when the device is lifted. (See Column 16, lines 12-15). This dictates that the handle of Herwick be of a smaller size to allow the off set from center. This is in contrast to the present invention in which the handle is centered laterally. (See page 24, lines 26 and 27) This allows for the handle be sized larger allowing for two people to simultaneously hold the device. Thus Herwick does not disclose each and every element of claim 69.

Regarding claims 70 and 72, Applicants submit that they are in condition for allowance by there very nature as dependant claims. Claims 70 and 72 depend from claim 69 and as such incorporate each and every element of claim 69. As discussed above, Herwick fails to disclose each and every element of claim 69 and therefore Herwick fails to disclose each and every element of claims 70 and 72.

Therefore, in view of the above arguments, Applicants respectfully request the reconsideration and withdrawal of the rejection to claims 69, 70, and 72 under 35 USC § 102.

35 U.S.C. 102(e) Rejection of Claims 69 and 73

Claim 69 is independent and claim 73 depends from claim 69. As stated in the response to the previous office action, Christian does not disclose each and every element of claim 69. The handle of the present invention is sized to enable two people to simultaneously hold the handle. This is a functionality not disclosed in Christian. Applicants respectfully disagree with the Examiner's dismissal of this argument based on the suggestion that making the handle of Christian sized to enable two people to hold the handle would be obvious. The problem with this dismissal is that it is outside the scope of a rejection based upon 35 U.S.C. 102. In order for a reference to anticipate a claim, the reference has to disclose each and every element of the claim.

Regarding claim 73, Applicants submit that it is in condition for allowance by its very nature as a dependent claim. Claim 73 depends from claim 69 and as such incorporates each and every element of claim 69. As discussed above, Christian fails to disclose each and every

element of claim 69 and therefore Christian fails to disclose each and every element of claim 73.

Therefore, in view of the above arguments, Applicants respectfully request the reconsideration and withdrawal of the rejection to claims 69, 73 under 35 USC § 102.

Claim Rejections under 35 U.S.C. §103

Claim 71 is rejected under 35 U.S.C 103(a) as being unpatentable over Herwick et al. (5,286,262). Applicants respectfully traverse the rejection.

Claim 71 depends from claim 69. As such, claim 71 incorporates each and every element of claim 69. Herwick fails to teach or suggest each and every element of claim 69. Specifically, there is no teaching or suggestion by Herwick to make the handle sized to enable two people to simultaneously hold the handle. In fact, Herwick teaches that the handle is off-center laterally so that the blood chamber will not tilt excessively downward when the device is lifted. (See Column 16, lines 12-15). This dictates that the handle of Herwick be of a smaller size to allow the off set from center. This is in contrast to the present invention in which the handle is centered laterally. (See page 24, lines 26 and 27) This allows for the handle to be sized larger allowing for two people to simultaneously hold the device. Thus Herwick does not teach or suggest each and every element of claim 69. Therefore Herwick fails to teach or suggest each and every element of claim 71.

Therefore, in view of the above arguments, Applicants respectfully request the reconsideration and withdrawal of the rejection to claims 71 under 35 USC § 103.

Finality of Office Action

Applicants respectfully submit that the present office action was incorrectly made final. Applicants believe that the Examiner's basis for finding Applicant's previous arguments unpersuasive lies outside the scope of 35 U.S.C. 102. Applicants have argued that Reidner (2,173,637), Herwick et al. (5,286,262) and by Christian et al. (6,152,902) do not disclose, as required for a 102 rejection, the subject matter of the rejected claims. In the Examiner's response to these arguments, the Examiner relied on *obviousness* based arguments. Such basis for rejection is outside the scope of 35 U.S.C. 102 and is more appropriately made as part of a 35 U.S.C. 103 rejection. Thus, in effect the Examiner


changed the basis for rejection of the claims (from 102 to 103). Therefore, the present Office Action should not have been made final because there were new grounds for rejection.

CONCLUSION

In view of the remarks set forth above, Applicant contends that the claims presently pending in this application are patentable and in condition for allowance. In such cases where the basis for the rejection of claims appears to have changed, Applicants believe that the cited reference does fail to teach or suggest as well as disclose the subject matter of the rejected claim. Applicants therefore respectfully urge the Examiner to pass the claims to allowance.

Respectfully submitted,
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